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09/524,928	03/14/2000	Keith Ainsley	0132-005	8974

7590

07/01/2003

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EXAMINER

WARE, TODD

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 07/01/2003

25

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/524,928

Applicant(s)

AINSLEY, KEITH

Examiner

Todd D Ware

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1,4 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1,4 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

### **DETAILED ACTION**

Receipt of amendments filed 3-25-03 and 4-3-03 is acknowledged. In view of the new position taken by Supervisory Examiners, prosecution is continued and the Notice of Allowability mailed 4-14-03 is withdrawn.

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1 and 4 are rejected under 35 U.S.C. 101 because

the claimed invention is directed to non-statutory subject matter. The claimed product occurs naturally and products of nature are not patentable. It is the position of the Examiner that a product consisting of urine obtained from two female white-tailed deer in estrus has not been modified from that which occurs in nature. It is noted that Applicant states in the 37 C.F.R. 1.132 Declaration filed 10-4-02 that female deer, including those in estrus, travel in relatively large groups of three and most often more. Applicant further declares that the use of the same scrape by two does in estrus does not occur in nature due to a large number of factors pertaining to the mating habits of animals in the deer family and that this knowledge is considered common among those dealing extensively and having expertise with the deer family. However, in the 37 C.F.R. 1.132 Declaration filed by Applicant July 11, 2001, Applicant states, "That during the observation period five does were observed to adopt buck-like behavior in that they pawed the mock scrape baited with 'Doc's Double Doe', and urinated further on it" when

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referring to the test performed to determine effectiveness of the claimed formulation.

This appears to contradict Applicant's statements that two does in estrus do not use the same scrape in nature. Furthermore, the prior art (US 4,773,177 and US 4,667,430) appears to recognize that multiple female deer co-habitate within an area and that the scrapes are made in trails heavily used by female deer. Accordingly, Applicant's previous statements that the use of the same scrape by two does in estrus does not occur in nature is not found persuasive.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collora et al (5,896,692; hereafter '692) **OR** Bell (5,672,342; hereafter '342).

5. '692 teaches a process for obtaining a scent lure for animals such as white tail deer, comprising animal urine wherein the urine is collected from more than one animal in estrus (abstract; C 2, L 1-30; claims). The urine collected is from animals in estrus or animals in rut and is collected using a urine-gathering stall. '692 does not teach limiting the collection of urine to two animals nor does it teach each of the specific steps as claimed.

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6. '342 also teaches a process for obtaining a scent lure for deer where the urine is collected from one female deer in estrus with a urine-gathering stall. It is submitted that an animal scent attractant wherein the urine is obtained from one animal would not attract an animal differently from one wherein the urine is obtained from two animals. Stated differently, absent a demonstration of criticality, it is submitted that urine collected from two animals is not critical over urine collected from one animal. It is also noted that '342 also does not teach limiting the collection of urine to two animals nor does it teach each of the specific steps as claimed.

7. The steps not specifically set forth in either '692 or '342 do not appear to be critical in view of the 37 C.F.R. 1.132 Declaration filed by Applicant July 11, 2001. Therein, Applicant declares that multiple deer, including female deer, urinate further on the scrape treated with the formulation obtained according to the instant process. Such a scrape is no longer limited to containing urine from two female deer in estrus and assessment of whether the deer are approaching the scrape on the basis of treatment with urine from two female deer in estrus can not be determined since the scrape contains urine from additional deer.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd D Ware whose telephone number is (703) 305-1700. The examiner can normally be reached on M-F, 8:30 AM - 5 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on (703)308-2927. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

tw

June 23, 2003

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600  
*[Signature]*